IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2462 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUNI HEMCHANDRA ACHARYA CO-OPERATIVE HOUSING SOC. LTD - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR SHALIN N MEHTA for Petitioner(s) : 1,
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 2,
NOTICE SERVED BY DS for Respondent(s) : 3,
MR BD KARIA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/09/2005

ORAL JUDGMENT

1. Rule. Shri M.R.Mengade, Learned AGP waives service of rule on behalf of the respondent No.1.

Shri H.S.Munshaw, learned advocate waives service of rule on behalf of the respondent No.2 and Shri B.D.Karia, learned advocate waives service of rule for respondent No.4. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner – society has prayed for an appropriate, writ, order and / or direction directing the respondents No.2 & 3 to act pursuant to the notice dated 20.3.2004 issued to the petitioner and to award clear and vacant possession of the land admeasuring 378 sq.yards of Final Plot Nos.205, 206, 208, 209/1 and 2 to the petitioner from Satygrah Chhavani Co-operative Housing Society Ltd-respondent No.4 herein.

3. It is not in dispute that under the Vejalpur Town Planning Scheme – Preliminary No.6 the petitioner society was allotted Original Plots – Final Plots No.205, 206, 208, 209/1 and the said

scheme is sanctioned on 14.8.2002 and it has come into force with effect from 14.9.2002. It appears from the record that the said land is consisting of the some lands out of Original Plot No.210. Simultaneously, the petitioner is required to hand over small piece of land of Original Plot No.205, 206, 208 and 209/1 as the same is part of 12 meter wide Town Planning Road. It appears that some portion of the land out of Original Plot No.210 i.e. Approximately 378 sq. Yards is in possession of the respondent No.4 society which is required to be handed to the petitioner on finalisation of the Town Planning Scheme. It is the case of the petitioners that the petitioner society has time and again represented to the respondents Nos.1 & 2 to implement the Town Planning Scheme fully and to hand over peaceful and vacant possession of the entire Final Plot Nos.205, 206, 208, 209/1 inclusive of the land forming part of the Original Plot No.210 i.e admeasuring 378 sq.yards which in occupation and possession of the respondent No.4. It is the case of the petitioner that only with view to favour the

respondent No.4, the petitioner society is not handing over the possession of the land admeasuring 378 sq.yards from the land bearing Original Plot No.210. Shri Shalin Mehta, learned advocate appearing on behalf of the petitioner society has relied upon the judgment of this Court in case of AMARSINGH SHANAJI THAKOR VS. STATE OF GUJARAT reported in (2004) 7 Gujarat High Court Judgments p.127 in support of his above submission and prayers.

4. In response to the notice issued by this Court, Shri H.S.Munshaw, learned advocate appears on behalf of the respondent No.2 and affidavit-in-reply is filed on behalf of the respondent No.2. It is submitted that so far as the land which is in possession of the respondent No.4 is concerned, possession of the same is required to be handed over to the petitioner on finalisation of the Town Planning Scheme. It is submitted that the respondent No.2 has already served notices under Section-68 of the Gujarat Town Planning Act directing the respondent No.4 for evicting from the land in

question and to hand over possession and therefore, it is denied that there is no action taken by the respondent No.2 to implement the Town Planning Scheme. It is further submitted in the affidavit-in-reply that the petitioner society is required to hand over small piece of land from Original Plot No.205, 206, 208, 209/1 to the respondent No.2 as the same is part of 12 mt.wide Town Planning Road and the petitioner has not handed over possession of the same and it is the duty under the statue to hand over peaceful and vacant possession of the land which is required to be handed over under the finalised Town Planning Scheme and therefore, it is submitted that on the one hand the petitioner is not fulfilling the obligation which is required to be fulfilled under the provisions of the Act and Rules and on the other hand, the petitioner is making complaint / grievance for not implementing the Town Planning Scheme by the respondent No.2. Shri Munshaw, learned advocate has also submitted that on handing over possession of the small piece of land from Original Plot Nos.205, 206, 208, 209/1 which is required to be handed over by the

petitioner society to the respondent No.2 which is forming part of 12 mt. Wide Town Planning Road, simultaneously the petitioner can be handed over possession which is required to be handed over to the petitioner unde4 the finalised Town Planning Scheme more particularly from the land out of Original Plot No.210 which is in occupation and possession of the respondent No.4.

5. At this stage, Shri Mehta, learned advocate appearing on behalf of the petitioner has disputed the allegation made on behalf of the respondent No.2 that the petitioner has not handed over the possession of the small piece of land from Original Plot Nos.205, 206, 208, 209/1 which is required to be handed over under the finalised Town Planning Scheme which is part of 12 mt wide Town Planning road. He has further submitted that in fact the petitioner society had already handed over the possession of the land which is required to be handed over to the respondent No.2 under the finalised Town Planning Scheme and in fact, there is compound wall

constructed by the respondent No.2 also.

6. Shri B.D.Karia, learned advocate appearing on behalf of the respondent No.4 has submitted that the question is with regard to the boundary and as such, the respondent No.4 cannot have any objection in handing over possession of the land from Original Plot No.210 is required to be handed over to the petitioner society under the finalised Town Planning Scheme and it is in fact duty of the respondent No.4 to hand over peaceful and vacant possession of the same to the respondent No.2 and / or to the petitioner. However, it is submitted that let all things be done simultaneously on a particular date in the presence of the representative of the petitioner society, representative of the respondent No.2 and representative of the respondent No.4 society so that in future there may not be any further dispute on the issue.

7. Heard the learned advocates appearing on behalf of the respective parties.

8. It is not in dispute that the Town Planning scheme – Vejalpur has become final and under the finalised town planning scheme the petitioner society is allotted Final Plot Nos.205, 206, 208, 209/1. Thus, under the provisions of the Gujarat Town Planning Act, the petitioner is entitled to peaceful and vacant possession of the plots which are allotted to the petitioner society. It is also required to be noted that some portion of the aforesaid Final Plot from Original Plot No.210 is in occupation and possession of the respondent No.4 society. Considering the provisions of the Gujarat Town Planning Act, more particularly, Sections 67 and 68 of the Act, after Town Planning Scheme has become final, the respondent No.4 has no authority to continue in possession of the land which is allotted to the petitioner society under the finalised Town Planning Scheme. It appears that it is the contention on behalf of the respondent No.2 that some portion of the land is also required to be handed over by the petitioner to the respondent No.2 under the finalised

Town Planning Scheme from Original Plot Nos.205, 206, 208, 209/1 which is covered under 12 mt. Wide town planing road which is not handed over but per contra, it is disputed by the learned advocate Shri Shalin Mehta on behalf of the petitioner and he has submitted that possession is already handed over. Be that it may. In view of the statement made by the learned advocate appearing on behalf of the petitioner society that the petitioner society has already handed over possession of the piece of land which is required to be handed over to the respondent NO.2 under the finalised Town Planning Scheme from the Original Plot Nos.205, 206, 208, 209/1 which is now forming part of 12 meter wide T.P.Road, it is observed that the respondent No.2 will be entitled to deal with the said piece of lands as if possession is already handed over to them and the petitioner society will never object to in using the said land and it will be open for the respondent No.2 to use the said piece of land as per the finalised T.P. Scheme.

9. As held by this Court in case of AMARSINGH SHANAJI THAKOR VS. STATE OF GUJARAT (Supra) relying upon the judgment of the Hon'ble Supreme Court in case of GREATER BOMAY AND ANOTHER V. ADVANCE BUILDERS (INDIA) PVT. LTD AND OTHERS reported in AIOR 1972 SC 793 it is bounden duty of the Town Planning authority to implement the Town Planning Scheme fully and to hand over peaceful and vacant possession of the plot which is alloted to the petitioner society under the finalised Town Planning Scheme even by removing encroachment, if any. In the affidavit-in-reply, the respondent NO.2 has clearly admitted that some of the portion which is allotted to the petitioner society from the land Original Plot No.210 is in illegal occupation and possession of the respondent No.4 – society. Considering the judgment of the Hon'ble Supreme Court in the above referred case, the respondent No.2 is required to hand over peaceful and vacant possession of the said land from taking possession from the respondent No.4 society and the respondent No..2 is required to implement the Town Planning Scheme fully. At this stage, learned

advocate appearing on behalf of the parties have suggested that let all the aforesaid things be done on 17th September, 2005 at 11.00 a.m. and on that day the representative of the petitioner society, representative of the respondent No.2 society as well as the representative of the respondent No.4 society will remain present for fully implementation of the Town Planning Scheme and exchange of possession of the lands in question which are required to be handed over to the respective parties under the finalised Town Planning Scheme. The parties are directed to act accordingly.

10. For the reasons stated above, the petition succeeds. The respondent No.2 is directed to fully implement the Town Planning Scheme which has become final by handing over peaceful and vacant possession of the entire Final Plot Nos.205, 206, 208, 209/1 and 2 inclusive of the land which is allotted to the petitioner society from Original Plot No.210 which is in possession of the respondent No.4. It is further observed that as stated hereinabove that so far as

portion of the land which was required to be handed over by the petitioner society to the respondent No.2 from Original Plot Nos.205, 206, 208, 209/1 be treated to be in possession of the respondent No.2 for implementation of the Town Planning Scheme as declared by Shri Shalin Menta, learned advocate for the petitioner to the effect that the petitioner society has already handed over possession of the said land in question and the same be used by the respondent No.2 for its 12 mtr. Wide town planning road and to use the same as per the finalised Town Planning Scheme and the petitioner society will not and shall not object to it and can never object to it.

11. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R.Shah, J.]

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